

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

GARY A. SPENCER,

Plaintiff,

v.

ARCH INSURANCE COMPANY, et al.,

Defendants.

**Case No. 2:15-cv-132
JUDGE GREGORY L. FROST
Magistrate Judge Norah McCann King**

ORDER

On May 15, 2015, Plaintiff and Defendant Arch Insurance Company, Inc. filed a joint stipulation of dismissal without prejudice of all claims against Arch Insurance Company, Inc. (ECF No. 19.) The parties indicated that the notice was pursuant to Federal Rule of Civil Procedure 41. In citing to Rule 41, however, the parties ignore the Sixth Circuit's holding in *Letherer v. Alger Group, L.L.C.*, 328 F.3d 262, 265-66 (6th Cir. 2003), *recognized as overruled on other grounds in Blackburn v. Oaktree Capital Mgmt., LLC*, 511 F.3d 633, 636 (6th Cir. 2008). *See also AmSouth Bank v. Dale*, 386 F.3d 763, 778 (6th Cir. 2004).

In *Letherer*, the Sixth Circuit addressed its previous holding that Rule 41 is confined to the dismissal of only an entire *action* and cannot provide a mechanism through which select parties or claims can be dismissed. *Letherer*, 328 F.3d at 266. The *Letherer* court also recognized both that the court of appeals has been inconsistent in applying this rule and that at least five other circuits have interpreted Rule 41 less restrictively. *Id.* at 266 n.2. But although appearing to question the narrow interpretation of Rule 41, the *Letherer* court did not resolve the issue to permit the action undertaken by Plaintiffs here. This Court therefore has no choice but

to adhere to precedent precluding piecemeal dismissal under Rule 41. Accordingly, the parties cannot obtain the dismissal they seek under Rule 41.

Recognizing the parties' intent to effectuate dismissal without prejudice, however, the Court construes the May 15, 2015 filing as one under Federal Rule of Civil Procedure 21. *See Haley v. City of Akron*, No. 5:13-cv-00232, 2014 WL 804761, at *2 (N.D. Ohio Feb. 27, 2014) (construing Rule 41 filing as a Rule 21 motion). This Court then **GRANTS** the motion and drops Defendant Arch Insurance Company, Inc., which has the effect of dismissing without prejudice all claims against that company. (ECF No. 19.)

IT IS SO ORDERED.

/s/ Gregory L. Frost
GREGORY L. FROST
UNITED STATES DISTRICT JUDGE